

**FILED**

MAR 05 2020 <sup>MT</sup>

UNITED STATES BANKRUPTCY COURT  
SAN FRANCISCO, CA

1 LAURIE A. DEUSCHEL  
2 5120 Second Street  
3 Rocklin, CA 95677  
4 (916) 289-3532

Unsecured Creditor In Pro Se

5  
6 **IN THE UNITED STATES BANKRUPTCY COURT**  
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
8 **SAN FRANCISCO DIVISION**  
9

10 In re:

11 PG&E CORPORATION,

12 Debtor.

Case No.:3:19-bk-30088 (Lead Case)  
Chapter 11

13 In re:

14 PACIFIC GAS AND ELECTRIC CO.,

15 Debtor.

Case No.:3:19-bk-30089  
Chapter 11

MOTION FOR RELIEF FROM AUTOMATIC  
STAY BY LAURIE A. DEUSCHEL

Date: April 29, 2020

Time: 10:00am

Place: Courtroom 17

450 Golden Gate Avenue, 16<sup>th</sup> Floor  
San Francisco, California

Judge: Hon. Dennis Montali

17 \_\_\_ Affects PG&E Corporation

18  X  Affects Pacific Gas and Electric Co

19 \_\_\_ Affects Both Debtors

20 All papers shall be filed in the Lead  
21 Case No. 19-30088(DM)  
22

Objection Date Deadline: April 8, 2020

23  
24 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 Laurie A. Deuschel (hereinafter "Deuschel") hereby moves this Court for relief from the  
26 automatic stay pursuant to 11 U.S.C. § 362(d)(1) (hereinafter "Motion") to allow her California State  
27 Court action, LAURIE A. DEUSCHEL v. CLEAR POINT FINANCIAL GROUP, INC., a California  
28 corporation, KAMYSHIN INVESTMENTS, INC., a California corporation, PACIFIC GAS AND

1 ELECTRIC Co., a California corporation, CITY OF ROCKLIN, a California local government, AND  
2 DOES 1 thru 10,000, Case No. SCV 40437 in the California Superior Court in Placer County  
3 (hereinafter "State Court Action"), for damages and injunctions to proceed. (A true copy of the  
4 Complaint in the State Court Action (hereinafter "Complaint") is attached to the Declaration of  
5 Laurie Deuschel (hereinafter "Declaration") as Exhibit A). Debtor Pacific Gas and Electric  
6 (hereinafter "PG&E") filed a petition for relief under Chapter 11 of the United States Bankruptcy  
7 Code on January 29, 2019, which caused an automatic stay pursuant to 11 U.S.C. § 362(a). Deuschel  
8 does not seek relief from the stay to pursue any enforcement of any judgement it may obtain in the  
9 State Court Action.

10 This Motion is based on the accompanying Declaration, Memorandum of Points and  
11 Authorities set forth below, Request for Judicial Notice, and on such other and further evidence and  
12 matters that the Court may consider at the hearing of the Motion.

## 12 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 13 **I. Introduction.**

14 As alleged in the original (Decl. ¶20) and First Amended Complaint (Decl. ¶23), the State  
15 Court's Action arises out of an incident on December 9, 2016 in which damages to Deuschel's  
16 property incurred after the former owners of the adjacent property obtain permits from PG&E and the  
17 City of Rocklin (hereinafter "City") in which both entities breached their mandatory duty to comply  
18 with California's Public Utility Commissions regulations. The damaged caused to Deuschel's  
19 property includes trespassing, damages to an approximately 100 year old tree, and other property  
20 damages. (Decl. ¶4-20.)

21 The State Court Action was commenced on December 11, 2017 in order to preserve time  
22 while Deuschel grieved for the loss of her step-daughter who died on October 22, 2017 from injuries  
23 that she sustained from a suicide attempt. (Decl. ¶21) and deal with her step-son's mental health  
24 difficulties who was refusing to accept the October 20, 2017 Family Court order that changed  
25 primary physical custody to her husband. On February 22, 2019, Deuschel amended the Complaint.

### 24 **II. Arguments**

#### 25 **A. Legal Standard**

26 A party may move for relief from automatic stay under 11 U.S.C. § 362, which provides that a  
27 bankruptcy court shall grant relief from the stay upon a showing of cause. (11 U.S.C. § 362(d)(1).)  
28 The court determines cause on a case by case basis. (*Christensen v. Tucson Estates, Inc. (In re*

*Tucson Estates, Inc.*), 912 F.2d 1162, 1166 (9th Cir. 1990) (citation omitted).) In determining whether cause exists to permit an action to proceed in a non-bankruptcy forum, courts often analyze the twelve factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984). These factors, known as the *Curtis* factors, are:

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1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceedings involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditor's, the creditor's committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination;
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
12. The impact of the stay and the balance of hurt.

*Curtis*, 40 B.R. at 799-800 (internal citations omitted); see also *In re Roger*, 539 B.R. 837, 844-45 (C.D. Cal. 2015); *In re Howrey*, 492 B.R. 19, 24 (Bankr. N.D. Cal. 2013); *Truebro, Inc. v. Plumberex Specialties Products, Inc. (In re Plumberex Specialties Products, Inc.)*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004). The Ninth Circuit has recognized that "the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." (*In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. BAP 2009).) While the *Curtis* factors are widely used to determine the existence of cause, not all of the

factors are relevant in every case, nor is a court required to give each factor equal weight. (*Plumberex*, 311 B.R. at 560.) “The most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate.” (*Roger*, 539 B.R. at 846, citing *Curtis*, 40 B.R. at 806.)

**B. Application of the Curtis Factors**

**(Factors 3, 6, 8, and 9 are inapplicable to this matter.)**

**1. Whether the relief will result in a partial or complete resolution of the issues**

In the context of this bankruptcy case, Deuschel has a potential claim that is yet to be disputed by PG&E. (Decl. ¶26.) If Deuschel filed a proof of claim in this case based on its claims and damages in the State Court Action, at some point in the future, PG&E would no doubt object to such a claim, requiring resolution of all the fact and legal issues presently before the State Court Action. Further, PG&E must address Deuschel claim in its reorganization plan, and if an objection is made and not resolved, the issue of voting by Deuschel would need to be addressed. Relief from stay as requested by Deuschel completely resolves these issues. This factor favors relief from stay.

**2. The lack of any connection with or interference with the bankruptcy case**

The resolution of the State Court Action will not interfere with the bankruptcy case. Deuschel’s case did not cause this bankruptcy and will not be a significant matter in the bankruptcy case. (Decl. ¶22.) Furthermore, the litigation expense itself is “irrelevant to this *Curtis* factor” and has been repeatedly held to be legally impermissible as a basis for denying stay relief. (*Roger*, 40 B.R. at 847, 848, citing and quoting *Santa Clara City Fair Ass’n v. Sanders (In re Santa Clara City Fair Ass’n)*, 180 B.R. 564, 566-67 (9th Cir. BAP 1995) (“Ordinarily, litigation costs to a bankruptcy estate do not compel a court to deny stay relief”).) This factor favors relief from stay.

**4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases**

The State Court Action has direct and detailed knowledge of the issues as well as the application of the California law towards those issues. This factor leans towards relief from the stay.

**5. Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation**

It is quite possible that PG&E maintains insurance, which would cover Deuschel’s claim; however, the stay in this case prevents Deuschel from conducting discovery. Nevertheless, this factor favors relief from stay.



1                   **7. Whether the litigation in another forum would prejudice the interests of other**  
2                   **creditor's, the creditor's committee and other interested parties**

3                   The State Court Action is between Deuschel, PG&E and additional parties who are not part of  
4 PG&E's Chapter 11 bankruptcy. (Decl. ¶20). Should it be determined that PG&E's insurance covers  
5 Deuschel's damages then PG&E's creditors will not be affected by this claim. This factor favors  
6 relief from the stay.

7                   **10. The interests of judicial economy and the expeditious and economical**  
8                   **determination of litigation for the parties**

9                   “Where a bankruptcy court may abstain from deciding issues in favor of an imminent state  
10 court trial involving the same issues, cause may exist for lifting the stay as to the state court trial.” (*In*  
11 *re Tucson Estates, Inc.*, 912 F.2d at 1166.) Judicial economy would be well served by granting relief  
12 from stay. (See *In re Kronemyer*, 405 B.R. 915, 922-923 (B.A.P. 9<sup>th</sup> Cir. 2009).) The State Court  
13 Action involves issues of state law, not bankruptcy issues.

14                   “[T]here can be no question that it would be ‘more appropriate’ for the non-bankruptcy court  
15 ‘to first determine the non-bankruptcy issues, i.e., whether a claim exists and the damages therein if  
16 any. After such determination, then the bankruptcy issue would become relevant.’” (*In re America*  
17 *West Airlines*, 148 B.R. 920, 924-925 (D. Ariz. 1993).) [I]t would be a waste of [bankruptcy court's]  
18 judicial resources to attempt to estimate the claim and its priority. (*Id.*, 925; See also, *In re Roger* 539  
19 B.R. 837; *In re Pac. Gas & Elec. Co.*, 279 B.R. 561, 570-71 (Bank. N.D. Cal. 2002) (finding that  
20 where “state law issues predominate over bankruptcy issues” and where all claimants “commenced  
21 litigation is state court prior to petition date”, abstention is favorable.))

22                   Many cases have held that a district court may properly consider the factor of judicial  
23 economy in deciding whether to lift an automatic stay. (See *Transamerica Insurance Co. v. Olmstead*  
24 (*In re Olmstead*), 608 F.2d 1365, 1368 (10<sup>th</sup> Cir. 1979); *Harris v. Fidelity & Deposit Co. (In re*  
25 *Harris)*, 7 B.R. 284 (S.D. Fla. 1980).)

26                   Here, there is no prejudice to the bankruptcy estate, only advantage. Furthermore, San  
27 Francisco is extremely farther than Roseville and would create a financial burden to Deuschel. This  
28 factor favors relief from stay.

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